

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Advanced Television Systems |) | |
| and Their Impact upon the |) | MB Docket No. 87-268 |
| Existing Television Broadcast |) | |
| Service |) | |
| |) | |

**RESPONSE OF COMMUNITY TELEVISION OF SOUTHERN CALIFORNIA
TO REPLY COMMENTS OF SMITH MEDIA LICENSE HOLDINGS, LLC**

Pursuant to Section 1.1206 of the Commission's rules,¹ Community Television of Southern California ("CTSC"), licensee of noncommercial educational television Station KCET, Los Angeles, California, hereby submits this Response to correct three errors in the Reply Comments of Smith Media License Holdings, LLC ("Smith") in this proceeding. Those Reply Comments were filed in opposition to the CTSC's Comments,² which reiterated its request for authority to maximize Station KCET's DTV operations on Channel 28 after the end of the DTV transition.

In its Reply Comments, Smith asserts (i) that CTSC is not entitled to maximize the KCET-DT post-transition facilities because it has not yet built maximized facilities; (ii) that

¹ Since this is a "permit-but-disclose" proceeding, CTSC does not believe it needs leave to file this Response as an ex parte communication under Section 1.1206. However, to the extent that leave may be required, CTSC hereby requests leave to file. Acceptance of this Response will serve the public interest by assuring that the Commission has an accurate record on which to resolve the issues raised.

² Comments of Community Television of Southern California in MB Docket No. 87-268, filed Jan. 25, 2007 ("CTSC Comments"). CTSC requested authority to operate with an ERP of 160 kW (DA) rather than the 107 kW specified in Exhibit B to the *Seventh Further Notice of Proposed Rule Making*.

KEYT (NTSC) serves the population that would be served by the proposed 1000 kW KEYT-DT facility; and (iii) that CTSC is asking the FCC to “prejudge” Smith’s request for a waiver of the “use-it-or-lose-it” deadline. None of these assertions is correct.

1. KCET has the right to maximize its DTV facilities on Channel 28. Station KCET is currently operating on DTV Channel 59 with the replication facilities authorized in the Commission’s 1997 *Sixth Report and Order*³ in the DTV proceeding. Because its DTV channel is out of core, CTSC elected to return to its NTSC channel, Channel 28, after the end of the transition. Under the Commission’s *Report and Order*⁴ in its Second Periodic Review of its DTV policies, stations like KCET which “receive a tentative DTV channel designation on a channel that is not their current DTV channel must serve at least 80 percent of the number of viewers served by the 1997 facility on which their replication was based” in order to retain their ability to maximize their permanent DTV facilities.⁵ Since KCET is currently serving the entire area authorized in 1997, it is entitled to maximize its facilities on Channel 28, subject only to the constraints imposed by the Commission on causing interference to others.

2. KCET is not proposing service to an area currently served by Station KEYT-DT. Contrary to Smith’s claim, CTSC’s request to maximize its DTV facilities on Channel 28 will not “expand [its] service to those who never have received it at the expense of those who *are* relying upon existing service.”⁶ Currently, KEYT is operating its NTSC facilities with an ERP

³ *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Sixth Report and Order, 12 FCC Rcd. 14,588 (1977), on recon. Memorandum Opinion and Order of Reconsideration of the Sixth Report and Order, 13 FCC Rcd. 7418 (1998).

⁴ *In re Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd. 18279 (2004) (“*Second Periodic Review*”)

⁵ *Id.* at ¶78.

⁶ Reply Comments at 3 (emphasis in original).

of 50.1 kW and a HAAT of 917 meters;⁷ its DTV facilities are operating pursuant to a construction permit with an ERP of 250 kW at a HAAT of 918 meters, and an application for a license to cover that permit has been filed.⁸ Manifestly, neither of Station KEYT's facilities currently serve the population that would be served by the 1000 kW facilities that KEYT had proposed.

In all events, Smith did not request a waiver of the "use-it-or-lose-it" deadline to construct a 1000 kW station. Rather, it indicated that it planned to construct a station with an ERP of 699 kW⁹ as proposed by the FCC in Exhibit B to its *Seventh Further Notice of Proposed Rule Making*. That facility would replicate the coverage of KEYT (NTSC), and, as CTSC demonstrated in its Comments, its proposed maximized KCET-D28 facilities would not cause more than allowable *de minimis* interference to this proposed KEYT facility.¹⁰ In short, grant of CTSC's request will not deprive people who are "relying upon [KEYT's] existing service" of any service.

3. CTSC is not asking the FCC to prejudge Smith's Waiver Request. Finally, Smith's argument that CTSC is asking the FCC to "prejudge" its request for a waiver of the "use-it-or-lose-it" deadline misunderstands CTSC's request. Under the Commission's decision in its *Second Periodic Review*, Smith was required to construct its full authorized DTV facilities -- 1000 kW -- by July 1, 2006 or lose that authorization. Smith filed a waiver of that deadline, but requested authority to construct a facilities with an ERP of 699 kW. In its comments, CTSC

⁷ See FCC File No. BLCT-2193.

⁸ See FCC File Nos. BMPCDT-20060630ACN and BLCDT - 20061102ABJ.

⁹ See Letter dated July 7, 2006 from Scott S. Patrick to Marlene H. Dortch, Esq., Secretary, FCC, at p.3.

¹⁰ See, Statement of Hammett & Edison, Inc., Consulting Engineers submitted with CTSC's Comments.

did not request that the Commission deny that request or require KEYT-DT to operate with an ERP of 250 kW, which would be the result should the Commission deny Smith's waiver request. Rather, CTSC only asked that it be allowed to maximize its DTV facilities on Channel 28 when that operation would not cause more than *de minimus* interference to KEYT-DT operating with the facilities sought in its waiver -- 699 kW.¹¹ The Commission can grant both Smith's request for a waiver of the use-it-or-lose-it deadline and CTSC's request for maximize its DTV facilities.

Conclusion

Accordingly, as indicated in its Comments, CTSC requests that the Commission change Exhibit B to the *Seventh Further Notice* to indicate that Station KCET will operate on Channel 28 with an ERP of 190 kW from an HAAT of 913 meters using Antenna ID 33524. Grant of that request will not cause unacceptable interference to the DTV facilities Smith has sought in its waiver, but would permit CTSC to expand the coverage of its public television service to a larger portion of the Los Angeles area.

Respectfully submitted,



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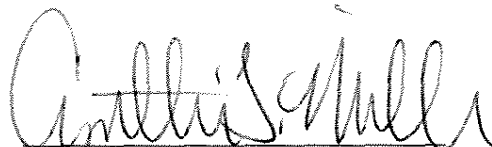
¹¹ It is somewhat ironic that acceptance of Smith's position will reward it for not building its proposed high-power facility while denying CTSC, which has followed the rules, initiated full DTV service early in the transition, and offered substantial amounts of high definition programming, the opportunity to serve a larger population with high quality public television programming.

Certificate of Service

I, Cynthia T. Miller, do hereby certify that I have this 14th day of March, 2007, caused to be sent by first class mail, postage prepaid, the attached Response of Community Television of Southern California to the Reply Comments of Smith Media License Holdings, LLC to:

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